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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 593

WILLIE P. ARCENEAUX, ET AL,
Petitioners,

versus

JAMES F. PFISTER,
Respondent.

OPPOSITION OF JAMES F. PFISTER, RESPONDENT, TO PETITION FOR A WRIT OF CERTIORARI.

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Respondent, James F. Pfister, suggests that this petition for a Writ of Certiorari, filed by Willie P. Arceneaux, Dudley A. Bernard, Cecil R. Blair, Samuel S. Broussard, William T. Carpenter, Jackson B. Davis, Wellborn Jack, Mike John, Jr., and Harold Montgomery, should be denied for the following reasons:

(1) There is no Federal Question involved in the application, as the "Questions Presented" on Pages 2 and 3 of the petition will show.

(2) The ruling of the trial judge that was reversed by the Court of Appeals was and is held wholly inconsistent with the trial judge's prior ruling against respondent, when respondent sought the dismissal of plaintiff's original

suit on the same ground of legislative immunity as petitioners now urge. The trial judge held, on respondent's motion for summary judgment, that respondent was **not** to receive legislative immunity, while shortly thereafter petitioners, who are similarly situated with respondent, were granted legislative immunity.

(3) The apparent fallacy of the trial judge's rulings lies in his holding that because respondent actively followed up the original legislative resolution by causing the machinery for the execution thereof to be put into motion, respondent was or might be responsible to plaintiff for any damage that he may have suffered as a result of unlawful (legislative) conspiracy to deprive plaintiff of his constitutional rights. But the same principle was not applied to petitioners. As well as respondent can determine, the trial judge apparently attempted to make a distinction between passive conspiracy and active conspiracy.

(4) But, as the Court of Appeals unanimously held, on petitioners' application for rehearing:

> "The thrust of the original complaint is, however, not that Pfister and the other committee members participated in the raids, but that the raids were carried out 'under the direction and in behalf of (the) defendant'. In other words the question is whether the committee's investigation was undertaken for a legitimate purpose or with an eye to depriving the plaintiffs of their constitutional rights, either through raids, through harassment and prosecution, or otherwise, whether by the committee's own acts or by the acts of others instigated by the Committee."

This is the crux of the matter. It was not that Pfister allegedly did for the entire Committee what he and the

petitioners specifically authorized, following the Legislative Resolution, but it was the fact that the Committee, of which Pfister was only the Chairman, authorized and undertook the investigation, and partook of a conspiracy, that resulted in the "raids" (conducted by the duly constituted authorities of the City of New Orleans and State of Louisiana). The trial judge, therefore, held that petitioners' conspiring to authorize allegedly illegal action is not actionable; but that any act pursuant to the authority is actionable. The Court of Appeals disagrees, and held that those who put the action into motion, by authorizing it, are liable and no distinction is drawn between applicants and Pfister, Chairman of the Committee, who admittedly did no more than the Committee.

For the several reasons above stated, the application should be denied.

Respectfully submitted,

HENICAN, JAMES & CLEVELAND,
C. ELLIS HENICAN,
C. ELLIS HENICAN, JR.,

By: .....

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Attorneys for Respondent.

CERTIFICATE

I hereby certify that a copy of the above and foregoing opposition has been served on opposing counsel by depositing copies thereof in the United States Post Office, with first class postage, prepaid, addressed to counsel of record for petitioners, at his post office address as follows:

Mr. W. Scott Wilkinson
Wilkinson, Woods, Carmody, Meadows & Hall
1708 Beck Building
Shreveport, Louisiana 70112

this ..... day of October, 1967.

C. ELLIS HENICAN, JR.,
Attorney for Respondent.